

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WALTER E. MARTIN, SR.,

Plaintiff,

v.

OFFICER MACKEL,

Defendant.

Civil Action No. 05-34 Johnstown

MEMORANDUM ORDER

_____Plaintiff's civil rights complaint was received by the Clerk of Court on January 24, 2005, and the case was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on September 15, 2005, recommended that the Defendant's motion to dismiss [Doc. # 10] be granted and the complaint be dismissed for failure to state a claim upon which relief can be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail at SCI Somerset, Plaintiff's address of record, and on the Defendant. No objections were filed. After de novo review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 14th Day of October, 2005;

IT IS HEREBY ORDERED that the Defendant's motion to dismiss [Doc. # 10] is GRANTED and the complaint is DISMISSED for failure to state a claim upon which relief can be granted.

The report and recommendation of Magistrate Judge Baxter, dated September 15, 2005, is adopted as the opinion of the court.

s/ SEAN J. McLAUGHLIN
United States District Judge

cc: all parties of record